

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 15th day of August, two thousand and six.

PRESENT:

HON. JON O. NEWMAN,
HON. CHESTER J. STRAUB,
HON. ROBERT A. KATZMANN,
Circuit Judges.

Xiu Ying Liu, Xing Hui Liu, Shan Liu,
Petitioners,

-v.-

No. 05-1092-ag
NAC

Alberto R. Gonzales,
Respondent.

FOR PETITIONER: Karen Jaffe, New York, New York.

FOR RESPONDENT: Thomas A. Marino, United States Attorney, Middle District of Pennsylvania, Stephen R. Cerutti II, Assistant United States Attorney, Harrisburg, Pennsylvania.

UPON DUE CONSIDERATION of these petitions for review of the Board of Immigration Appeals (“BIA”) decisions, it is hereby ORDERED, ADJUDGED, AND

1 DECREED that the petition for review is DENIED.

2 Xiu Ying Liu (“Liu”) (A95-870-278) and her children, Xing Hui Liu and Shan Liu (A95-
3 870-279, A95-870-280) through counsel, petition for review of the Board of Immigration
4 Appeals' (BIA) decision denying their “motion to reopen,” following the BIA’s summary
5 affirmance of the decision of the IJ (Jeffrey S. Chase) denying Liu’s application for asylum and
6 withholding of removal. We assume the parties’ familiarity with the underlying facts and
7 procedural history of the case.

8 This Court reviews the BIA’s denial of a motion to reopen or reconsider for abuse of
9 discretion. *See Kaur v. BIA*, 413 F.3d 232, 233 (2d Cir. 2005) (per curiam); *Jin Ming Liu v.*
10 *Gonzales*, 439 F.3d 109, 111 (2d Cir. 2006). An abuse of discretion may be found where the
11 BIA’s decision “provides no rational explanation, inexplicably departs from established policies,
12 is devoid of any reasoning, or contains only summary or conclusory statements; that is to say,
13 where the Board has acted in an arbitrary or capricious manner.” *Kaur*, 413 F.3d at 233-34; *Ke*
14 *Zhen Zhao v. U.S. Dep’t of Justice*, 265 F.3d 83, 93 (2d Cir. 2001) (internal citations omitted).

15 The BIA did not abuse its discretion in denying Liu's “motion to reopen.” Because Liu's
16 motion failed to meet the evidentiary requirements for a motion to reopen under 8 C.F.R. §
17 1003.2(c)(1), the BIA reasonably construed the motion as a motion to reconsider and denied it as
18 untimely. Liu's motion, which challenged the BIA's October 14, 2004 decision, was filed on
19 January 3, 2005, well beyond the 30-day filing deadline under the regulations. *See* 8 C.F.R. §
20 1003.2(b)(2). Further, the BIA reasonably found that even if Liu's motion were considered to be
21 a motion to reopen, it would be denied pursuant to 8 C.F.R. § 1003.2(c)(1), because it failed “to
22 state any new facts that are material and that [would] be proven at a hearing to be held if the

1 motion [were] granted[,] and [it was] . . . unaccompanied by any evidence that was unavailable
2 and could not have been discovered or presented during proceedings before the Immigration
3 Judge.” Liu's motion presented no new evidence but merely reiterated her claims that she had
4 been forcibly sterilized in China and that the IJ's credibility finding was erroneous.

5 For the foregoing reasons, the petition for review is DENIED. Having completed our
6 review, Liu’s pending motion for a stay of removal in this petition is DENIED as moot.

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9 FOR THE COURT:
10 Roseann B. MacKechnie, Clerk

11 By: _____
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